IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.701 of 1991

Yogesh G. Digaonkar
and Anr. ... Appellants

V/s

Smt.Ambidevi Diwansingh Mehta
and Ors. ... Respondents

Shri S.M.Vidyarthi for Appellant
Shri G.S.Hegde for Respondent nos.1 to 3

CORAM:S.R.SATHE,J.

DATED:12th Jan. 2005

ORAL JUDGMENT :-

1. The Appellants original opponents in application NO.3051 of 1988 have preferred this appeal against the judgment and order passed by the Member, Motor Accidents Claims Tribunal for Greater Bombay, Bombay whereby the application filed by the widow and sons of deceased Diwabsing Pratapsingh Mehta under Section 166 of the Motor Vehicles Act 1988 claiming compensation was allowed and the opponents were directed to pay

applicants' compensation of Rs.2,45,000/- inclusive of claim under Section 92A of Motor Vehicles Act together with interest at the rate of 12% p.a. from the date of application till realisation and costs of the application. For the sake of convenience hereinafter the parties shall be referred to as the claimants and opponents.

2. Brief facts giving rise to this appeal are as under:

. On 18-11-1988 deceased Diwabsingh Pratapsingh Mehta was crossing V.S. Road, Prabhadevi at about 8-30 a.m.. At that time motor car No.GCK 9666 dashed the deceased and he fell down. As a result of the same he was removed to KEM hospital. However, he scummed to the injuries on 19-11-1988. After giving dash the car halted for a while and immediately thereafter went away. On the basis of the information given by the eye witness, police registered the offence.

3. At the time of accident deceased was about 34 years of age and was serving as a security guard in Modern Mill Ltd. having monthly salary of Rs.2,000/-. The wife and sons of deceased were dependent on deceased. Hence they filed application under Section 166 of Motor Vehicles Act 1988 for compensation of Rs.3 lacs.

4. The said application was opposed by the owner of the vehicle i.e. opponent no.1. He admitted that vehicle

bearing No.GCK 9666 is owned by him. However, denied the allegation that the said vehicle met with an accident on 18-11-1988. On the contrary, the opponent contended that his car bearing No.GCK 9666 was lying in the garage of M/s Jigar Motors at Vapi, Gujrat and that engine of the car was removed from the car from 14-11-1988 to 29-11-1988. He therefore contended that he is in fact not liable to pay any compensation to the claimants and prayed for dismissal of the application.

5. The opponent no.2 Insurance Company did not file any written statement.

6. In order to prove the claim, the claimant no.1 i.e. wife of deceased examined herself at Exh.11 and an eye witness to the accident viz. Prabhakar Ajgaonkar Exh.14 and produced certain documents. As against this, the owner of the vehicle i.e. opponent no.1 examined himself at Exh.19 and employee of Insurance Company, Pankaj Shah, Exh. 20 and Ashok Thakur, employee from garage.

7. After considering the evidence adduced by both the parties the learned Member of the Motor Accidents Claims Tribunal came to the conclusion that accident occurred due to the rash and negligent driving of the driver of Car No.GCK 9666 and as a result of the dash given by the said car to deceased he died.

8. After considering the evidence with regard to the age and income of the deceased by applying multiplier of 20, the learned Member granted compensation of Rs.2,45,000/- to the claimants together with interest at the rate of 12% p.a. from the date of the application.

9. Being aggrieved by the above mentioned order the claimants have filed the present appeal.

10. In this appeal before me, Shri S.M.Vidyarthi, learned Advocate for the Appellants has urged only three points. Firstly, he submitted that there was no sufficient evidence to show that Car bearing No.GCK 9666 owned by the opponent no.1 was involved in the accident in question. He, therefore, submitted that the application ought to have been dismissed as the vehicle involved in the accident was not established. Secondly,he canvassed before me that the multiplier applied by the learned Member, Motor Accidents Claims Tribunal is on higher side. Lastly, he submitted that interest granted is exorbitant and interest at the rate of 7.5% p.a. be granted.

11. Though the learned Advocate has made his submissions on the above mentioned 3 points. He has fairly submitted that his main emphasis is on the first point and according to him the learned trial Judge failed in coming to the conclusion that car bearing No.GCK 9666 was involved in the accident. At the outset

it must be mentioned that admittedly after giving dash to the deceased the car did not stop at the said place and naturally panchanama of the place of offence with presence of the car at the said place is not on record. However, there is an eye witness to the accident and he has specifically stated that at the relevant time he saw the deceased crossing the road and at that time one car came from other side and it gave dash to the deceased. Thereafter car halted for a while and then went away from the said place. He has specifically stated that at that time he noted the number of the said car and thereafter in short time he even lodged complaint with police by giving the number of the said car. It is pertinent to note that there is nothing in the cross examination of the said witness which would any way indicate that this witness has any grudge or animus against the owner of the said car or that he was having any intimacy with the deceased. It is not even suggested to this witness that he has deposed falsely with a view to help the claimants. It is crystal clear from his evidence that he is an independent witness and there is absolutely no reason for him to give false evidence against the appellant. So, the learned Member, Motor Accidents Claim Tribunal has rightly accepted his evidence.

12. It is an admitted fact that complaint in respect of accident in question was lodged with the Police within short time from the accident and number of Car as GCK

9666 is specifically mentioned therein. It is nowhere even suggested that the said FIR is prepared subsequently or that number mentioned in the same has been included later on. When such is the position, due weightage shall have to be given to the averments made in the said FIR and it must be held that the witness had seen the car in question and had according given its number to the police.

13. It is the contention of the opponent no.1 the owner of the said Car that few days prior to 14-11-1988 he and his family members had gone to Goa when his car was parked in the hotel premises at Chiplun, it was noticed that somebody had given dash to his car and it was damaged. As a result of the same he and his family members were required to sleep in the car for one day and thereafter the car was taken to Vapi after towing and it was kept in garage of M/s Jigar Motors at Vapi during the period from 14-11-1988 to 29-11-1988 as the engine of the said Car was removed. In order to prove this contention, the owner of the said car has examined an employee of the said garage and produced the job card through him. The said witness has also stated that the car was in their garage during period 14-11-1988 to 29-11-1988. Not only that but owner has also examined one employee from the Insurance Company who has stated that the owner had made one claim application in respect of accident met to his car and insurance company had in fact paid an amount of Rs.7,693/-. However, it is

pertinent to note that opponents' own evidence shows that estimate for the repairs of the car, given by the garage was for only Rs.4,000/-. So, under such circumstances one fails to understand on what basis the Insurance company paid Rs.7,693/-. Moreover, the said witness has clearly admitted that the claim application made by the owner was not entered in their register with Inward number. Naturally, this also creates grave doubt about the genuineness of the alleged claim made by the owner. The entire story given by the opponent no.1 regarding accident and evidence adduced by him appears to be quite untrustworthy and as such rightly rejected by the learned Member, Motor Accidents Claim Tribunal, Bombay. We cannot ignore the fact that the accident in question has taken place at Prabhadevi, Bombay and FIR is lodged within short time in which there is mention of the number of the car in question. So, the learned Member has rightly held that said car had met with an accident. Incidently it must be noted that even according to the opponent no.1 the said car had met with an accident but according to him it was prior to 14-11-1988. If really that had happen then normally he would have lodged a complaint with Police, but admittedly the opponent has not lodged such complaint. However, curiously enough we find that in spite the same the Insurance Company gave some compensation to the opponent no.1. So, having regard to all the facts and circumstances and considering the preponderance of probabilities, I have no hesitation to hold that the

claimants have proved that opponent's car bearing Car NO.GCK 9666 met with an accident and gave dash to the deceased.

14. The learned Advocate for the opponents argued before me that the multiplier applied by the Tribunal is on higher side. In order to substantiate his argument he has placed reliance on a case, **Managing Director, Tamil Nadu State Road Transport Corporation Ltd.V/s K.S.Bindu and Ors. 2006 (I) T.A.C.1 (SC)**. It is correct that in that case the deceased was of 34 years of age and multiplier applied was 13. However, it must be noted that accident in question has occurred in November 1988 and the application under Section 166 has been decided on 26-3-1991. If we see various other authoritative pronouncements during the above mentioned period, then we find that previously multiplier of 20 or even more was granted when deceased was within the age group of 30 or so. In the instant case, the deceased was 31 years of age at the time of death, so multiplier of 20 applied by the Member, Motor Accidents Claims Tribunal cannot be said to be exorbitant or unreasonable.

15. It was argued on behalf of the opponents that interest granted by the Tribunal is exorbitant and interest at 7.5% p.a. be granted. For this, reliance has been placed on various cases decided by the Apex Court, such as :

i) Kaushnuma Begum and Ors. V/s New India Assurance co. Ltd and Ors. 2001 ACJ 428, wherein interest was granted at the rate of 9%.

ii) Tamil Nadu State Transport Corporation ltd. V/s S.Rajapriya and Ors. 2005(2) TAC 305(SC) wherein interest was granted at the rate of 7.5%.

iii) New India Assurance Co.Ltd V/s Charlie and Anr. 2005(2) T.A.C. 297(SC), wherein interest was granted at 7.5% and

iv) Managing Director,Tamil Nadu State Road Transport Corporation ltd. V/s K.S.Bindu and Ors. 2006(1) T.A.C.1 (SC), wherein also interest is granted at the rate of 7.5% p.a..

16. Firstly, it must be noted that in all the above mentioned rulings the Apex Court has granted the interest accordingly after taking into consideration the then prevailing rate of interest on fixed deposit in the Bank. If this criteria is to be applied then we find that during period from 1988 till 1991 interest at the rate of 12% p.a. was being paid on the fixed deposit in the bank and so in numerous cases decided during the above mentioned period even the Apex Court has granted interest at the rate of 12% p.a. for example

i) R.L.Gupta and Ors. V/s Jupiter General Ins. Co. and Ors. 1990(1) T.A.C. 592

ii) National Insurance Co. Ltd. V/s Swaranlata Das and Ors. 1973 ACJ 748 ,

17. So, under such circumstances it is very clear that the rate of interest granted by the learned Member, Motor Accidents Claims Tribunal, Bombay cannot be said to be exorbitant or illegal. There is no necessity to interfere with the same.

18. Thus from the above discussion it is very clear that the learned Member, Motor Accidents Claims Tribunal has properly appreciated the evidence on record and correctly awarded the compensation mentioned above.

19. In view of the above, the appeal is dismissed with costs. The order passed by the Member, Motor Accidents Claims Tribunal, Bombay is confirmed. The costs of this appeal are quantified to the tune of Rs.1,000/-. Liberty is granted to the claimants to withdraw the compensation amount deposited in Court.

(S.R.SATHE,J.)